

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOSEPH BROWN,

Plaintiff,

v.

MARIN FOX-HEIGHT,

Defendant.

CASE NO. C10-5535BHS/JRC

ORDER GRANTING PLAINTIFF'S
MOTION TO AMEND THE
COMPLAINT

This 42 U.S.C. § 1983 civil rights action has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. §§ 636(b)(1)(A) and (B) and Local Magistrate Judge Rules MJR 1, MJR 3, and MJR 4. Before the court is plaintiff's motion asking if he can add "negligence" to the relief section of his complaint.

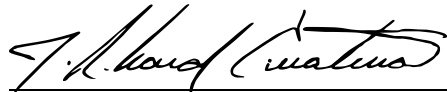
A party may amend a complaint prior to an answer being filed once as a matter of right. See Fed. R. Civ. P. 15 (a)(1). Here, an answer was filed on October 5, 2010 (ECF No. 13). After an answer has been filed a plaintiff needs leave of court to amend a complaint. See Fed. R. Civ. P. 15 (a) (2). However, leave to amend should be freely given "when justice so requires." See Fed. R. Civ. P. 15 (a) (2). Here, this claim for negligence appears to arise from the same facts, so the motion is granted so that it may be addressed as part of this action.

1 The motion is GRANTED. Amendment of the complaint will require that the plaintiff
2 file a new complaint. The amended complaint must be filed on or before **May, 27, 2011**. The
3 new complaint may not add any defendants to this action. The court will not consider the
4 pending motion for summary judgment, (ECF No. 20), at this time. The Clerk is directed to
5 strike this motion from the calendar.
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7 After counsel for defendants has had time to consider the amended complaint, defendants
8 may re-note their motion or proceed as allowed under the federal rules. Because this claim arises
9 from the same facts, it is unlikely that additional discovery will be necessary. However, if either
10 party believes additional discovery is needed as a result of the new claim, they may file a motion
11 asking the court to open discovery. The scheduling order is stayed with the exception of the joint
12 status report which will still be due on August 5, 2011.
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14 The Clerk's office is directed to send plaintiff a civil rights form, remove (ECF No. 20
15 and 21) from the court's calendar, and note the **May 27, 2011** due date.

16 DATED this 22nd day of April 2011.

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19 J. Richard Creatura
20 United States Magistrate Judge
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